IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6261 OF 1999

Jayant R. Chitnis ....Petitioner
V/s.
The State of Maharashtra & Ors. ....Respondents

Mr.N.V. Bandiwadekar for the Petitioner.

Mrs.M.P. Thakur, AGP for the Respondents.

CORAM : F.I. REBELLO, &
S.J. VAZIFDAR, JJ.
DATED : 1ST MARCH, 2007.

P.C. :

1. The Petitioner as per the revenue records, is shown as being in possession of the lands identified under item Nos.3 to 6 of paragraph 2 of the Petition. From the revenue records which are not disputed, considering the affidavit of Mr.Ravindra Ganesh Kulkarni, there was a partition effected and which was recorded on 21.2.1958. In that partition the father was allotted the lands identified under survey No.15/2 and 17/1. Survey No.15/2 corresponds to Gat No.30 and survey No.17/1 corresponds to Gat No.33. The area of respective lands is 1.43 and 1.60 acres. The father of the Petitioner expired on 26.5.1978. By mutation entry the names of the legal heirs numbering a were

recorded on 12.12.1980. The declaration under the Act was issued on 12.11.1982 and slab fixed as 8 acres. A part of the land of Gat Nos.30 and 33 have been acquired and has been shown as belonging to the share of the Petitioner as Manager of joint family. This was worked out by considering the property of the Petitioner and also Gat Nos.30 and 33. It is on this basis that the proceedings have been initiated for acquiring the excess land of 8 acres and that is the subject matter of the present Petition.

2. According to the Petitioner, once the partition was effected in the year 1958, each member of the joint family was allotted different shares. The father’s share cannot be clubbed as individual share of the Petitioner or on the basis of being the Manager of the family as admittedly the partition was effected in the year 1958. Therefore so far as the father’s share is concerned, it will have to be divided amongst all legal heirs whose names are recorded in terms of mutation entry effected on 12.12.1980. The father’s share admeasures about 7 acres 19 gunthas. Even if notionally that share is divided amongst all heirs, the total share of the Petitioner along with the notional share in the father’s property would not exceed 8 acres. It is

therefore submitted that it was not open to the Respondents to have acquired the Petitioner's share. It may be mentioned that other legal heirs of Ramrao Chitnis, the deceased father, are not before this Court. It is also not seen as to whether the Special Land Acquisition Officer while considering the shares of the other co-sharers has taken fact to be considered.

3. In the light of that, this Petition can be disposed of by issuing the following directions :-

i). Award No.1342 dated 30.9.1999 in respect of Gat No.30 and Award dated 29.2.2000 in respect of Gat No.33 are set aside including the declaration under 6 of the Land Acquisition Act in respect of both Gat numbers and the matter is remanded to Respondent No.4 who after hearing the Petitioner and other legal heirs, to pass appropriate orders according to law. The exercise to be completed within six months from the copy of this order to be made available to Respondent No.4.

Rule is made absolute accordingly. No order

as to costs.

(S.J. VAZIFDAR, J.) (F.I. REBELLO, J.)